

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MARTHA GODINEZ,

Plaintiff,

vs.

U.S. BANK, N.A., AS SUCCESOR IN
INTEREST TO DOWNEY SAVINGS AND
LOAN ASSOCIATION, F.A., et al.,

Defendants.

Case No: C 10-4660 SBA

ORDER REMANDING ACTION

Dkt. 6, 16

Plaintiff Martha Godinez filed the instant action in San Mateo County Superior Court on August 13, 2010, against various Defendants, including U.S. Bank National Association (“U.S. Bank”), FCI Lender Services, Inc. (“FCI”), and Patelco Credit Union (“Patelco”). These Defendants removed the action under 28 U.S.C. § 1441, alleging that certain of Plaintiff’s state law causes of action arise under federal law. The parties are presently before the Court on the motions to dismiss filed by the aforementioned Defendants. Dkt. 6, 16. Although no oppositions to the motions have been filed, the Court finds that it lacks removal jurisdiction. As such, the Court remands the action to state court.¹

I. BACKGROUND

On August 13, 2010, Plaintiff, through counsel, filed the instant action against (1) U.S. Bank, as successor in interest to the Federal Deposit Insurance Corporation as Receiver for Downey Savings and Loan, F.A., (2) FCI, (3) Patelco, as successor in interest to Cal State 9 Credit Union, (4) Franklin Credit Management Corporation, (5) N.D.

¹ The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 Financial dba Primestar Financial, and (6) Shoaib Mahmud. Plaintiff's claims arise from
2 Defendants' involvement in an allegedly fraudulent residential mortgage transaction
3 pertaining to Plaintiff's property located in East Palo Alto, California.

4 On October 15, 2010, Defendants U.S. Bank and FCI, later joined by Patelco,
5 removed the action to this Court under 28 U.S.C. § 1441. Removing Defendants allege that
6 Plaintiff's causes of action for fraud and deceit, negligent misrepresentation, breach of
7 fiduciary duty and tortious interference with contractual relations have been "artfully" pled
8 as state claims "even though [they are] ... disguised claims that turn[] on loan-related
9 disclosure violations under [TILA]." Notice of Removal ¶¶ 4-7. U.S. Bank and FCI, and
10 Patelco, have now filed separate motions to dismiss, which are noticed for hearing on
11 February 1, 2011. Under Civil Local Rule 7-3, any response to a noticed motion is due no
12 later than twenty-one days prior to the hearing date. As such, Plaintiff's oppositions or
13 statements of non-opposition were due by January 11, 2011. Although the response
14 deadline has since passed, the Court has not received any responses to the motions.

15 **II. LEGAL STANDARD**

16 Before deciding any issue on the merits, a district court has an independent
17 obligation to examine its subject matter jurisdiction. Valdez v. Allstate Ins. Co., 372 F.3d
18 1115, 1116 (9th Cir. 2004). "[R]emoval statutes are strictly construed against removal."
19 Luther v. Countrywide Homeloans Servicing, LP, 533 F.3d 1031, 1034 (9th Cir. 2008).
20 "The presumption against removal means that the defendant always has the burden of
21 establishing that removal is proper." Moore-Thomas v. Alaska Airlines, Inc., 533 F.3d
22 1241, 1244 (9th Cir. 2009). As such, any doubts regarding the propriety of a removal favor
23 remanding the case. See Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). A district
24 court must remand a case to state court "if at any time before the final judgment it appears
25 that the district court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c); Gaus, 980
26 F.2d at 566.

1 **III. DISCUSSION**

2 The federal removal statute provides, in pertinent part, that “any civil action brought
3 in a State court of which the district courts of the United States have original jurisdiction,
4 may be removed by the defendant or the defendants, to the district court of the United
5 States for the district and division embracing the place where such action is pending.”
6 28 U.S.C. § 1441(a). “The district courts shall have original jurisdiction of all civil actions
7 arising under the Constitution, laws, or treaties of the United States.” Id. § 1331. The
8 “arising under” qualification of § 1331 confers district courts with jurisdiction to hear
9 “[o]nly those cases in which a well-pleaded complaint establishes either that [1] federal law
10 creates the cause of action or that [2] the plaintiff’s right to relief necessarily depends on
11 resolution of a substantial question of federal law.” Armstrong v. N. Mariana Islands, 576
12 F.3d 950, 954-55 (9th Cir. 2009) (internal quotations omitted). In other words, the federal
13 law must be a “necessary element” of the state law claim. Id.

14 In the instant case, Plaintiff alleges only state law causes of action in her Complaint,
15 and there is no mention of any federal statutes or regulations. “[T]he plaintiff is ‘the master
16 of his complaint’ and may ‘avoid federal jurisdiction by relying exclusively on state law.’”
17 Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009) (quoting Balcorta v.
18 Twentieth Century-Fox Film Corp., 208 F.3d 1102, 1106 (9th Cir. 2000)). Nonetheless,
19 “there exist a handful of extraordinary situations where even a well-pleaded state law
20 complaint will be deemed to arise under federal law for jurisdictional purposes.” Hall v. N.
21 Am. Van Lines, Inc., 476 F.3d 683, 687 (9th Cir. 2007) (internal quotations and citation
22 omitted). “Under the ‘artful pleading’ doctrine, a well-pleaded state law claim presents a
23 federal question when a federal statute has completely preempted that particular area of
24 law.” Id. “The artful pleading doctrine allows removal where federal law *completely*
25 *preempts* a plaintiff’s state-law claim.” Rivet v. Regions Bank of La., 522 U.S. 470, 475
26 (1998) (emphasis added).

27 In their Notice of Removal, Defendants allege that Plaintiff’s causes of action for
28 fraud, negligent misrepresentation, breach of fiduciary duty and tortious interference with

1 contractual relations have been “artfully pled ... to avoid federal jurisdiction even though
2 [they] are disguised federal claim[s] that turn[] on loan-related disclosure violations under
3 [TILA].” Notice of Removal ¶¶ 4-7; see also Defs.’ Mot. to Dismiss at 5, Dkt. 6. Though
4 not cited by Defendants, the Court notes that TILA contains a limited preemption provision
5 which preempts state law claims only to the extent they conflict with the provisions of
6 TILA. 15 U.S.C. § 1610(a)(1).² Here, Defendants do not argue or make any showing that
7 the common law causes of action at issue are inconsistent with or otherwise completely
8 preempted by TILA.

9 Nor is the Court persuaded that “the plaintiff’s right to relief necessarily depends on
10 resolution of a substantial question of federal law.” Armstrong, 576 F.3d at 955. As noted,
11 Defendants contend that Plaintiffs’ causes of action are based on TILA disclosure
12 violations. Notice of Removal ¶¶ 4-7. The Court disagrees. TILA is mentioned nowhere
13 in the Complaint. But even if it were, Defendants ignore that a state common law claim,
14 such as fraud, may properly be predicated upon a duty created by TILA, without
15 transmuting it into a federal claim. See Amparan v. Plaza Home Mortg., Inc., 678 F. Supp.
16 2d 961, 976 (N.D. Cal. 2008) (citing Lovejoy v. AT & T Corp., 119 Cal. App. 4th 151, 158
17 (2004)). Moreover, as Defendants tacitly acknowledge, Plaintiff has alleged multiple
18 factual grounds for her claims, including those that have no alleged relation to TILA.
19 Where a violation of a federal statute is one of several independent allegations supporting a
20 state law cause of action, the state law cause of action does not “necessarily turn” on the
21 construction of the federal statute. Rains v. Criterion Sys., Inc., 80 F.3d 339, 345-46 (9th
22 Cir. 1996) (“When a claim can be supported by alternative and independent theories—one
23 one of which is a state law theory and one of which is a federal law theory—federal
24 question jurisdiction does not attach because federal law is not a necessary element of the
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26 ² Section 1610(a)(1) states: “Except as provided in subsection (e) of this section,
27 this part and parts B and C of this subchapter do not annul, alter, or affect the laws of any
28 State relating to the disclosure of information in connection with credit transactions, except
to the extent that those laws are inconsistent with the provisions of this subchapter and then
only to the extent of the inconsistency.”

1 claim.”); see also Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996) (“[I]f a single
2 state-law based theory of relief can be offered for each of the three causes of action in the
3 complaint, then the exercise of removal jurisdiction was improper.”). Thus, even if
4 Plaintiff’s causes of action could be construed as referring to violations of federal law,
5 resolution of these claims does not “necessarily turn” on the construction of federal law.

6 **IV. CONCLUSION**

7 The Court does not countenance Plaintiff’s counsel Steven Mendelsohn’s complete
8 and unexplained failure to respond to the pending motions to dismiss. At the same time,
9 Defendants should not have removed the action to this Court in the first instance.

10 Accordingly,

11 IT IS HEREBY ORDERED THAT the instant action is REMANDED to Superior
12 Court for the County of San Mateo. Defendants’ motions to dismiss are DENIED AS
13 MOOT. The Clerk shall close the file and terminate all pending matters and deadlines.

14 IT IS SO ORDERED.

15 Dated: January 31, 2011


16 SAUNDRA BROWN ARMSTRONG
17 United States District Judge
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